



## INTERIOR BOARD OF INDIAN APPEALS

San Manuel Band of Mission Indians v. Sacramento Area Director,  
Bureau of Indian Affairs

27 IBIA 204 (03/06/1995)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

SAN MANUEL BAND OF MISSION INDIANS

v.

SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 94-147-A

Decided March 6, 1995

Appeal from the disapproval of a proposed amendment to tribal Articles of Association, and of an adoption.

Reversed and remanded.

1. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

The Bureau of Indian Affairs must defer to a tribe's reasonable interpretation of its governing document.

APPEARANCES: Jerome L. Levine, Esq., and Frank R. Lawrence, Esq., Sacramento, California, for appellant.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant San Manuel Band of Mission Indians (Band) seeks review of a May 17, 1994, decision of the Sacramento Area Director, Bureau of Indian Affairs (Area Director, BIA), disapproving a proposed amendment to the Band's Articles of Association and the adoption of Pauline Murillo. For the reasons discussed below, the Board of Indian Appeals (Board) reverses that decision and remands this matter to the Area Director with instructions to approve the amendment and adoption.

On December 15, 1934, the Band voted not to organize under the Indian Reorganization Act, 25 U.S.C. § 476 (1934). On June 18, 1966, it adopted Articles of Association (Articles), which were approved by the Commissioner of Indian Affairs on December 1, 1966. Two amendments to the Articles were adopted on April 1, 1973. The amendments were approved by the Deputy Assistant Secretary of the Interior on May 14, 1973. The approval states that the amendments were adopted by a vote of 10 for, 0 against, and 0 abstaining, taken "at a general meeting of the members of the band held in accordance with Article X of" the Articles.

Article II, Membership, provides:

A. The membership of the Band shall consist of those living persons in the following categories, provided that such persons have not relinquished in writing their membership in the Band:

(1) Persons whose names appear on the January 1, 1940 San Manuel Census Roll except that where "NE" appears in Column I opposite the name of an individual, such person shall not be eligible for membership.

\* \* \* \* \*

(3) Persons who have been adopted by the Band and such adoption has been approved by the Bureau of Indian Affairs.

B. If a person who is eligible for membership has been allotted on another reservation or is officially enrolled with or is a recognized member of some other tribe or band, such person shall not be enrolled. A "recognized member of some other tribe or band" is a person who, because of his affiliation with the other tribe or band has participated in elections and general activities, has received benefits or has shared in the assets of the tribe or band.

Article III, Governing Body, provides that "[t]he governing body of the Band shall be the General Council which shall consist of all adult members twenty-one (21) years of age or older." Article VII, Meetings, as amended in 1973, provides in pertinent part:

The general council shall be convened in a regular meeting on the second Tuesday of every month. \* \* \* A meeting of the general council shall not be valid unless there shall be twenty percent (20%) of the qualified voters present and no business shall be conducted in the absence of a quorum.

A thorough reading of the Articles show that the Band's business is conducted by the General Council meeting in regular monthly sessions.

On August 18, 1993, the Band submitted two General Council resolutions to the Superintendent, Southern California Agency, BIA (Superintendent). Both resolutions were adopted at a General Council meeting on May 24, 1993, by a vote of 18 for, 15 against, and 0 abstaining.

The first resolution amended Article II, section B, of the Band's Articles by adding a new sentence at the end of the section. The new sentence would read: "Notwithstanding anything in this Section B to the contrary, the enrollment ineligibility of persons who have been allotted on another reservation shall not be applicable to the otherwise qualified enrollment of PAULINE ORMEGO MURILLO." (Capitalization in original.)

The second resolution conditionally granted an adoption application filed by Murillo. One condition was that BIA approve the amendment to Article II, section B.

Murillo had apparently applied to be adopted because of questions concerning her enrollment status. In earlier proceedings evidently begun sometime in 1987, Murillo had applied to be enrolled. Murillo stated that she had been born and raised on the San Manuel Reservation, had always lived there, and considered herself a tribal member based on information from her mother that her name was on the 1940 Census Roll. At same time BIA informed Murillo that her name was not on the 1940 Roll. <sup>1/</sup> It is not clear whether the information from BIA caused Murillo to apply for enrollment, or whether she applied for other reasons.

By letter of August 2, 1987, the Band's Chairman advised Murillo that her application was denied under Article II, section B, of the Band's Articles because she had been allotted an another reservation. From information in the record, Murillo lived with her mother, who was a member of the Band. Murillo's father was an allotted member of the Torres Martinez Band of Cahuilla Mission Indians. The Act of August 25, 1950, 64 Stat. 470, required the Secretary of the Interior to, inter alia, establish a roll for the Torres-Martinez Band, and to allot lands on the Torres-Martinez Reservation to members not previously allotted. Pursuant to this Act, someone, perhaps Murillo's father, applied to have her enrolled with the Torres-Martinez Band. Although the Torres-Martinez Band recommended that she not be enrolled because she had never lived on the reservation, BIA found that she met the requirements under the Act and its implementing regulations in 25 CFR Part 43 (1958), and enrolled her and allotted her 40 acres. <sup>2/</sup>

Section 6 of the San Manuel Band's Ordinance No. 2, dealing with enrollment, provides a right of appeal from an adverse enrollment decision to the Area Director and the Commissioner of Indian Affairs. Murillo appealed the Band's August 2, 1987, decision.

Both the Area Director and the Acting Assistant Secretary - Indian Affairs upheld the Band's decision. In his January 23, 1989, decision, the Acting Assistant Secretary, while noting that "[t]he ultimate decision \* \* \* is up to the \* \* \* Band," suggested that Murillo "might offer to give [up the] interest in the Torres-Martinez allotment [she] inherited to the Band in exchange for adoption."

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<sup>1/</sup> This Roll is not part of the administrative record.

<sup>2/</sup> The record indicates that Murillo was granted a fee patent to this allotment in 1971, and sold the property. Murillo has stated that she inherited interests in other allotments on the Torres-Martinez reservation.

<sup>3/</sup> The date on the copy of this decision in the record is not clear. The date could be Jan. 28, 1989.

The next information in the administrative record relates to the two resolutions under consideration in this appeal. By memorandum dated November 18, 1993, the Area Director informed the Superintendent that the amendment to Article II, section B, was not approved. The disapproval was based on an interpretation of Article X, Amendment, which states in its entirety: "These Articles of Association may be amended by a majority vote of the General Council and such amendment shall be in effect upon the approval of the Commissioner of Indian Affairs." Upon advice from the Regional Solicitor's Office, the Area Director interpreted Article X to require a majority vote of all members of the General Council, not a majority vote of the members attending the meeting. Based on this interpretation and a finding that there were 48 General Council members, of which 25 constituted a majority, the Area Director concluded that the amendment failed by 7 votes. Because the Area Director gave no independent reasons for not approving Murillo's adoption, it appears that the adoption was not approved solely because the amendment to Article II, section B, was not approved. The Superintendent informed the Band of the Area Director's decision.

The Band sought reconsideration. The Area Director reaffirmed his decision on May 17, 1994, and informed the Band of its right to appeal to the Board. The Band appealed.

#### Discussion and Conclusions

The rather straightforward question presented in this case is: What is the meaning of "General Council" in Article X? The obvious starting place for resolving this question is Article III, which, as quoted supra, defines "General Council" to mean all adult members of the Band.

Without specifically addressing the Article III definition, the Band contends that "General Council" is used uniformly in the Articles to mean the "General Council" as authorized to conduct tribal business under Article VII, as amended, i.e., those members of the General Council attending a General Council meeting at which at least 20 percent of the members are present. Arguing that the term "voters" is used when a majority vote of all General Council members is required, the Band contends that only Article V, Vacancies and Recall, requires a majority vote of all General Council members. Article V provides that a recall election may be initiated by "a petition signed by at least 50 per cent of the voters."

At page 1 of his decision, the Area Director states that "Article X is unambiguous" and that its "requirement is different from the requirement set forth under Article VII, as amended, for conducting regular business of the General Council." He does not, however, discuss the many other references to "General Council" in the Articles, or provide other support for his conclusions, either in the decision or in a brief. The November 8, 1993, memorandum from the Regional Solicitor's office, upon which the Area Director relied, cites as support only the definition of "General Council" in Article III.

The Board has carefully read the Band's Articles, and agrees with the Band that only Article V explicitly requires action by a percentage of all voters. Furthermore, within the context of Article V, the terms "voters" and "General council" are clearly given different meanings. The Board's reading of the Articles indicates that the term "General Council" is used throughout the Articles to mean that part of the General Council which is empowered to conduct business, *i.e.*, those members attending a General Council meeting at which at least 20 percent of all members are present. On its face Article X does not indicate that a different meaning for "General Council" was intended.

The Band contends that its interpretation of Article X is reasonable. Citing Missouri Pacific Railway Co. v. State of Kansas, 248 U.S. 276 (1919), and Rhode Island v. Palmer, 253 U.S. 350 (1920), it argues that the United States Supreme Court has interpreted both the two-thirds vote of each House of Congress necessary to override a Presidential veto, and the two-thirds vote necessary to propose an amendment to the United States Constitution, to mean two-thirds of those members voting, not two-thirds of all members. In Missouri Pacific Railway Co., the Court stated that it "might adversely dispose of [the argument that a two-thirds vote of all members was necessary] by merely referring to the practice to the contrary which has prevailed from the beginning" (248 U.S. at 279). However, the Court exhaustively reviewed the issue and concluded that the practice was "no mere formal following of what had gone before but came from conviction expressed, after deliberation, as to its correctness by many illustrious men" (248 U.S. at 284).

Similarly, in Davis v. Commissioner of Indian Affairs, 4 IBIA 228 (1975), the Board affirmed the Commissioner's decision that Article X of the constitution of the Sac and Fox Tribe of Oklahoma, which provided that "[Amendments] shall be submitted to a referendum vote of the adult members of the Tribe, and shall be effective if approved by majority vote," required only a majority vote of those members voting. The appellant, who sought to invalidate seven constitutional amendments, had argued that the Article required a majority vote of all adult members of the tribe.

[1] In view of the otherwise consistent usage of the term "General Council" in the Band's Articles, and of precedent in analogous areas, the Board concludes that the Band's interpretation of Article X is reasonable. Although the Board declines to find that the Area Director's interpretation is unreasonable, the Band's reasonable interpretation of its own governing document is entitled to deference by the Department. Shakopee Sioux Community v. Acting Minneapolis Area Director, 27 IBIA 163 (1995), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the May 17, 1994, decision of the Area Director is reversed, and this matter is remanded to him, with instructions to approve the amendment to Article II,

section B, of the Band's Articles of Association, and the adoption of Pauline Murillo. 4/

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge

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4/ Because of this disposition, the Band's request for oral argument is denied.